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Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-fourth session

Report of the Chair of the Legal and Technical Commission on the work of the Commission at the first part of its twenty-fourth session

I. Introduction

1. The 2018 session of the Legal and Technical Commission of the International Seabed Authority has been divided into two parts. Part I was held from 12 to 23 March, and part II will be held from 2 to 13 July.

2. On 12 March, the Commission adopted its agenda (ISBA/24/LTC/1) and elected Michelle Walker as Chair and Harald Brekke as Vice-Chair.

3. The Commission noted with satisfaction that as many as 90 per cent of its members attended part I of its 2018 session. Malcolm Clark, Elie Jarmache and Alonso Martinez Ruiz were unable to attend; however, Mr. Clark was able to contribute by email to the discussions.

II. Activities of the contractors

A. Status of contracts for exploration

4. On 12 March, the Commission took note of the report on the status of contracts signed by the Authority for exploration for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts (ISBA/24/LTC/2).

B. Status of implementation of training programmes under contracts for exploration and allocation of training opportunities

5. On the same date, the Commission was briefed on the selection of candidates for training programmes since July 2017. At the twenty-third session, in 2017, the Commission had agreed that the training subgroup would work with the secretariat

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intersessionally to identify appropriate candidates for training opportunities (ISBA/23/C/13, para. 7). During that period, 11 first-ranked and 14 alternate candidates were selected on the basis of the recommendations of the subgroup.

6. During part I of its session, the Commission was invited to select 11 additional candidates for five training programmes being offered by four contractors pursuant to their contracts for exploration with the Authority. On the basis of the recommendations of the subgroup, 10 first-ranked and 14 alternate candidates were selected by the Commission (see ISBA/24/LTC/5).

7. During the general discussion of the implementation of the training programmes, some members reiterated the importance of monitoring the impact that former trainees were having on their countries of origin, as well as the need to monitor the benefits to trainees who were receiving long-term training, for example those pursuing doctoral and master's degrees.[1]

C. Additional measures to improve efficiency in the process for reviewing annual reports

8. On 12 March, the Commission considered a report on the evaluation of annual reports of contractors and on monitoring compliance with plans of work for exploration (ISBA/24/LTC/3). The Commission took note of the report and requested the Secretary-General to provide further details and analysis on the implementation of the five-year programme of activities and to discuss with contractors the need for more clearly defined programmes of activities, reflecting the request made by the Assembly at the twenty-third session (see ISBA/23/A/13).

III. Regulatory activities of the Authority

A. Consideration and adoption of the draft regulations on the exploitation of mineral resources in the Area

9. On the same date, the Commission was briefed by the secretariat on the proposed workflow and expected outcomes for the current session in respect of the draft exploitation regulations. On 13 March, the Commission discussed the requests made by the Council, as contained in the statement by the President of the Council on the work of the Council during the first part of the twenty-fourth session (ISBA/24/C/8). The Commission set up three working groups to explore the following areas: the reinforcement of the principle of the common heritage of mankind in the operative provisions of the draft regulations; the need to protect developing countries from the adverse effects of mineral production in the Area on their economies; and the role and legal status of standards, recommendations and guidelines, including the preparation of terms of reference for a workshop dedicated to the development of standards and guidelines.

10. From 13 to 16 March, the Commission considered a number of key issues relating to the draft regulations, identified as a result of prior discussions in the Commission and stakeholder responses to the draft regulations, as well as the discussions held by the Council immediately before the meetings of the Commission. Those issues included the structure of and workflow under the draft regulations; key definitions (good industry practice, best environmental practice, serious harm and best available technology); confidentiality; the use of exploitation contracts as

[1] In accordance with the Commission's recommendation outlined in ISBA/19/LTC/14, para. 19, subsect. (C).

security; the protection of developing countries from adverse effects; performance guarantees; the concepts of "contract area", "mining area" and "interested persons"; and public consultation. The Commission also discussed other issues, including documentation requirements for applying for a plan of work, matters relating to production, termination of sponsorship and environmental scoping. The Commission requested the secretariat to consider those discussions in revising the draft regulations.

11. On 19 March, the Commission considered a proposal submitted by the working group on the terms of reference for a workshop on the development of standards and guidelines. The Commission recommended that standards and guidelines be developed separately and that a workshop on the development of standards be organized in the first half of 2019. The Commission adopted the terms of reference for an initial workshop on the development of standards and requested the secretariat to finalize those terms. It was decided that the terms of reference for a workshop on the development of guidelines would be considered during part II of the session.

12. On the same date, the Commission discussed the possibility of collaborating with the Finance Committee to facilitate cooperation in the development of the draft regulations, in particular with regard to the payment mechanism and equitable sharing criteria. The Commission agreed with the proposal made by the secretariat to hold a joint meeting with the Committee during part II of the session and requested the secretariat to make the necessary arrangements.

13. On 21 March, Richard Roth and Randolph Kirchain from the Massachusetts Institute of Technology made a presentation on the economics of seabed mining for polymetallic nodules and on the work undertaken to date on a financial model for the Authority, which included further analysis following Mr. Roth's discussion with the Council. The Commission concurred with the fundamental principles applied and the approach taken by the Institute's team to the development of the model. During its discussion with the team, the Commission highlighted areas for further consideration and analysis by the team, especially in connection with metal price forecasts and underlying cost assumptions. While acknowledging the work performed by the team in respect of a payment mechanism, the Commission considered that it was premature to make recommendations to the Council on options to best realize the objectives and principles set out in the United Nations Convention on the Law of the Sea and in the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The Commission and the secretariat discussed focus areas to be explored by the team on the basis of the relevant items in the statement by the President of the Council and noted that the Secretary-General would make the arrangements necessary for the team to continue its work. The Commission will report to the Council in July 2018 on the status of the model and possible payment options, in addition to the outcome of its joint meeting with the Finance Committee.

14. On 20 and 22 March, the Commission considered a revised and annotated version of the draft regulations, including provisions suggested by the working groups. The Commission requested the secretariat to incorporate its suggestions and comments into the text and to produce a further revised version, with the necessary comments as an attachment. The secretariat noted that the further revised draft regulations would be prepared as a working paper in the official languages for consideration by the Commission and the Council at their meetings. A briefing note would also be prepared to highlight the key matters discussed by the Commission, together with any matters requiring the Council's direction or guidance.

B. Recommendations for the guidance of contractors for the assessment of possible environmental impacts arising from the exploration for marine minerals in the Area

15. On 13 March, the Commission received a report summarizing the comments submitted by 13 contractors and several technical experts in respect of the draft revised recommendations. The Commission requested the working group on environmental matters to review those comments and prepare an annotated document for consideration by the Commission. On 22 March, the Commission discussed a working paper prepared by the working group on general comments and suggested responses, in particular on the key issues of the legal status and level of detail of the recommendations, the environmental impact assessment template and timing of submission, the design of preservation reference zones and impact reference zones, and test mining and testing of components. The Commission requested the working group to continue to consider the key issues and to submit a further revised document for consideration during part II of the session.

IV. Implementation of the data management strategy of the Authority

16. On 12 March, the Commission received an update on the implementation of the data management strategy, the first phase of which is expected to be completed by October 2018. The Commission noted with satisfaction the progress made by the secretariat since initiating the implementation of the strategy and expressed its willingness to assist the secretariat with future implementation. The Commission acknowledged the importance of migrating and loading historical data into the Authority's database. The Commission endorsed the use of proprietary software in the implementation of the database management project to ensure the long-term sustainability of the application. The Commission also emphasized the importance of developing and strengthening communications with contractors to ensure that all stakeholders were adequately represented.

17. On 22 March, the working group on data management met the data manager of the secretariat, who provided more details about the database being developed for the Authority.

V. Matters referred to the Commission by the Council

18. On 16 March, the Commission received a detailed report on the legal and policy-related aspects of the possible alignment of the Authority's regulations on prospecting and exploration with respect to the offer of an equity interest in a joint venture arrangement (ISBA/24/LTC/4). Differing legal and policy views were expressed by the members of the Commission. Considering that the priority task was the development of the exploitation regulations, and in the light of those divergent views, the Commission decided to defer consideration of the item until part II of its session.

19. On 19 March, recalling the request of the Assembly that the Commission continue to address the question of the operationalization of the Enterprise as an important matter in the light of developments with respect to deep-sea mining, the Commission considered issues relating to the operation of the Enterprise and endorsed the draft terms of reference for a study on those issues (ISBA/20/LTC/12, annex). The Commission requested that the study be ready for review or that an update be provided on progress in this respect for part II of its session.

VI. Other matters

20. On 20 March, the Secretary-General informed the Commission with regret of the sharp deficit in the voluntary trust fund for the purpose of defraying the cost of participation of members of the Commission and members of the Finance Committee from developing countries in the meetings of the Commission and of the Finance Committee. The Commission expressed its grave concern over the matter, in particular at such a time, given the Council's recent in-depth request to the Commission regarding progress on the draft exploitation regulations. Furthermore, many members of the Commission, in particular those from Africa, Asia and Latin America and the Caribbean, would not be able to participate in the meetings of the Commission owing to a lack of financial support from the fund, which could raise the issue of a quorum at the meetings of the Commission in July. The Commission urged the Secretary-General to make every effort to solicit contributions to the fund and to bring the issue to the Council's attention during part II of its session.

21. On 22 March, the Commission was briefed on the outcome of the two meetings of a legal working group, convened in London in September 2017 and February 2018, on liability for environmental harm from activities in the Area.

22. On 23 March, the Commission had an extensive discussion on holding open meetings during part II of its session. The Commission reaffirmed the importance of transparency with regard to issues that were of general interest to members of the Authority and that did not involve discussions of confidential information. The Commission noted that the Council had held informal meetings during part I of its session to allow observers to participate in discussions of the draft exploitation regulations and that the secretariat had been facilitating stakeholder contributions to the development of a regulatory framework since 2014. Considering the Commission's agenda and expected workload for part II of the session, together with the schedule of meetings for the Commission and the Council, as well as the joint meeting with the Finance Committee, the Commission concluded that it would not be feasible to host an open meeting in July. The Commission requested the secretariat to prepare a discussion paper on how open meetings could be best structured in the future to facilitate meaningful input and exchanges in respect of particular subjects, including regulatory development.